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6
UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

7
 8 Acelia L. Madril and James Kim

9 Plaintiffs,

10 v.

11 Case No.

12 Andrew M. Ellis, Andrew M. Ellis
 13 Law, PLLC, E-Service, Inc., and
 Tanoshi Management, LLC, d/b/a
 14 Town Square Dental,

15 Defendants.

16 **NOW COME** Plaintiffs, Acelia L. Madril and James Kim, by and through their
 17 counsel, James C. Vlahakis, and complaining as follows against Defendants Andrew M.
 18 Ellis, Andrew M. Ellis Law, PLLC, E-Service Inc. and Tanoshi Management, LLC, d/b/a
 19 Town Square Dental:

20 **I. Parties, Jurisdiction and Venue**

21 1. Plaintiff Acelia L. Madril (at times “Madril” or “Plaintiff Madril”) is a natural
 22 person, over 18-years-of-age, who at all times relevant, resided in Gilbert, Arizona.

23 2. Plaintiff James Kim (at times “Kim” or “Plaintiff Kim”) is a natural person,
 24 over 18-years-of-age, who at all times relevant, resided in Gilbert, Arizona.

25 3. Plaintiffs Kim and Madril bring this civil action to redress Defendants’
 26 violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

27 4. Subject matter jurisdiction exists pursuant to 28 U.S.C. § 1331 and 15 U.S.C.
 28 § 1692k(d).

1 5. Supplemental jurisdiction exists relative to Plaintiffs' state law claims. See,
2 28 U.S.C. § 1337.

3 6. Defendant Andrew M. Ellis Law, PLLC ("Ellis Law") is a corporation
4 organized and existing under the laws of the state of Arizona and maintains its principal
5 place of business at 2601 N. 16th Street, Phoenix, Arizona 85006.

6 7. Defendant Andrew M. Ellis ("Ellis") is a "Creditors' Rights Attorney"
7 according to his LinkedIn webpage. <https://www.linkedin.com/in/andrew-ellis-2b6144a>
8 ("Can I help with a debt? You bet!").

9 8. According to the Arizona Corporation Commission, Defendant Ellis is the
10 sole member of Ellis Law.

11 9. Defendant E-Service Inc. ("E-Service") is an Arizona Corporation, maintains
12 its principal place of business at 1830 S. Alma School Road Blvd., #104, Suite 113, Mesa,
13 Arizona, and is licensed to operate as a "collection agency" under A.R.S. § 32-1001(2)(a).

14 10. Defendant Tanoshi Management, LLC is a corporation organized and existing
15 under the laws of the state of Arizona and maintains an office in Gilbert, Arizona.

16 11. Defendant Tanoshi Management, LLC, d/b/a Town Square Dental
17 ("Defendant Town Square Dental" or "Town Square Dental") provides dental services to
18 residents of within this judicial district.

19 12. Defendant Ellis Law is a "debt collector" as defined by 15 U.S.C. § 1692a(6)
20 because it uses instrumentalities of interstate commerce and the mail in its business – the
21 principal purpose of which is the collection of debt owed or due or asserted to be owed or
22 due another.

23 13. Defendant Ellis is a "debt collector" as defined by 15 U.S.C. § 1692a(6)
24 because Ellis uses instrumentalities of interstate commerce and the mail in its business –
25 the principal purpose of which is the collection of debt owed or due or asserted to be owed
26 or due another.

27 14. Defendant E-Service is a "debt collector" as defined by 15 U.S.C. § 1692a(6)
28 because it uses instrumentalities of interstate commerce and the mail in its business – the

1 principal purpose of which is the collection of debt owed or due or asserted to be owed or
2 due another.

3 15. Venue is proper in this judicial district as all of the complained of conduct
4 attributable to Defendants occurred within this district and because all of the Defendants
5 conduct significant business in this district. See, 28 U.S.C. § 1391(b)(2).

6 **II. Background Facts**

7 16. Plaintiffs Madril and Kim married on March 7, 2019.

8 17. Plaintiff Madril received dental care services from Defendant Town Square
9 Dental between April 15, 2019 and August 28, 2019.

10 18. Plaintiff Kim has never received any dental care services from Defendant
11 Town Square Dental.

12 19. Prior to or at the time that Plaintiff Madril first received dental services from
13 Defendant Town Square Dental, Town Square Dental asked for and obtained the name,
14 group number and member ID associated with Madril's insurance provider, Delta Dental
15 of California.

16 20. In seeking the name, group number and member ID associated with Plaintiff
17 Madril's insurance provider, Defendant Town Square Dental represented to Madril that it
18 would submit all of her dental bills to her dental insurance provider.

19 21. Plaintiff Madril relied on Defendant Town Square Dental's representation
20 that it would submit all of her dental bills to her dental insurance provider and agreed to
21 receive dental services from Town Square Dental based upon this representation.

22 22. After Plaintiff Madril provided Defendant Town Square Dental with the
23 name, group number and member ID associated with her insurance provider, Town
24 Square Dental submitted certain bills to Madril's dental insurance provider.

25 23. For example, in a state court collection suit filed against Plaintiffs by
26 Defendants E-Service, Ellis and Ellis Law, Defendants E-Service, Ellis and Ellis Law
27 allege that "Town Square Dental provided ACELIA L. MADRIL with services pursuant
28

1 to the Agreement and submitted bills to ACELIA L. MADRIL's dental insurer for
2 services rendered."

3 24. Defendant Town Square Dental, despite representing that it would forward all
4 of Plaintiff Madril's bills to her dental insurer, did not submit all of its bills to Madril's
5 dental insurance provider.

6 25. By failing to forward all of Plaintiff Madril's bills to her dental insurer,
7 Defendant Town Square Dental breached its duties and obligations to Madril.

8 26. By failing to forward all of Plaintiff Madril's bills to her dental insurer,
9 Defendant Town Square Dental caused Plaintiff Madril to incur unnecessary charges where
10 the charges would have been paid by Madril's dental insurance provider.

11 27. On at least one occasion, Defendant Town Square Dental overcharged
12 Plaintiff Madril for dental services.

13 28. Defendants E-Service, Ellis and Ellis Law have claimed that "[i]n 2019
14 Town Square Dental assigned Plaintiff the Agreement."

15 29. Defendants E-Service, Ellis and Ellis Law have sued the Plaintiffs in state
16 court to collect funds that Defendants claim Plaintiff Madril owes.

17 30. As a result of billing Plaintiff Madril for dental services, and despite not
18 submitting all of its bills to Madril's dental insurance provider, Defendant Town Square
19 Dental regarded Madril as being obligated to reimburse Town Square Dental for certain
20 dental services (hereafter the "Subject Debt").

21 **II. The Alleged Acquisition of the Subject Debt**

22 31. Defendant E-Service, by and through Defendants Ellis and Ellis Law, claims
23 to have acquired the Subject Debt.

24 32. According to an email sent by Defendants Ellis and Ellis Law, "[i]n October
25 2019, Town Square Dental sent [Plaintiff Madril's] account to E-Service, Inc. ("ESI"), a
26 third-party debt collector. ESI attempted to collect the debt by sending letters and calling
27 you. In July 2020, ESI sent your account to our law firm."

1 33. Defendants E-Service, Ellis and Ellis Law regard the Subject Debt as being
2 in a defaulted status.

3 34. Defendants E-Service, Ellis and Ellis Law consider the Subject Debt to be a
4 “debt” as this term is defined by 15 U.S.C. § 1692a(5).

5 35. In attempting to collect the Subject Debt from Plaintiffs Madril and Kim,
6 Defendants E-Service, Ellis and Ellis Law have considered each Plaintiff to be a
7 “consumer” as this term is defined by 15 U.S.C. § 1692a(3).

8 36. On behalf of Defendant E-Service, Defendants Ellis and Ellis Law have
9 emailed Plaintiff Madril in an effort to collect the Subject Debt (“the Ellis Law Emails”).

10 37. The Ellis Law Emails conveyed information regarding the Subject Debt and
11 were a form of “communication” as this term is defined by 15 U.S.C. § 1692a(2).

12 38. On August 18, 2021, Ellis and Ellis Law emailed the following to Plaintiff
13 Madril: “[u]nfortunately, you did not respond to the e-mail we previously sent you. We
14 would prefer to work out a payment plan with you because LAWSUITS ARE
15 EXPENSIVE.”

16 39. The August 18, 2021 email also contained the following language:

17 The contract you signed with Town Square Dental states that “in the
18 event your account is turned over to a collection agency for non-payment
19 or other delinquency, you will be responsible for payment of any and all
reasonable collection costs and/or attorney fees, in the addition to the
balance owed.” The amount currently due is \$300.00.

21 40. As discussed below, Plaintiff Madril does not owe the amount in question
22 because Defendant Town Square Dental breached its duty and obligation to submit all of
23 Plaintiff’s bills to her dental insurer before seeking to the Subject Debt from her.

24 41. Via email, Defendants Ellis and Ellis Law have demanded that Plaintiffs pay
25 a collection fee of 36%.

26 42. The Agreement that Defendants Ellis and Ellis Law have relied upon in their
27 communications with Plaintiff Madril does not reflect that Madril is obligated to or
28 otherwise agreed to pay a collection fee of 36%.

1 43. Via email, Ellis and Ellis Law have demanded that Plaintiffs pay an attorney
 2 fee of 25%.

3 44. The Agreement that Defendants Ellis and Ellis Law have relied upon in their
 4 communications with Plaintiff Madril does not reflect that Madril is obligated to or
 5 otherwise agreed to pay an attorney fee of 25%.

6 45. In response to the wording of certain emails sent by Defendants Ellis and
 7 Ellis Law on behalf of Defendant E-Service, Plaintiff Madril informed Defendants Ellis
 8 and Ellis Law that she believed that Defendants Ellis and Ellis Law had violated certain
 9 provisions of the FDCPA.

10 46. Concerned about legality of certain representations and threats made by
 11 Defendants E-Service, Ellis and Ellis Law, Plaintiffs retained counsel.

12 47. On August 19, 2021, Plaintiffs, by and through counsel, contacted Ellis and
 13 Ellis Law to discuss mutually resolving the Subject Debt and certain violations of the
 14 FDCPA.

15 48. Instead of substantively responding to Plaintiff's proposed resolution, on or
 16 about August 25, 2021, Defendants Ellis and Ellis Law filed a collection lawsuit in
 17 Maricopa County Justice Court on behalf of Defendant E-Service, Inc. and against
 18 Plaintiffs to collect the Subject Debt (at times "the E-Service lawsuit").

19 49. The E-Service lawsuit was filed *within days* of Plaintiffs' counsel reaching
 20 out to Ellis and Ellis Law to resolve the Subject Debt and certain violations of the
 21 FDCPA.

22 50. Just days before filing the E-Service lawsuit, on August 18, 2021,
 23 Defendants Ellis and Ellis Law claimed that "[t]he amount currently due is \$300.00".

24 51. Defendants E-Service, Ellis and Ellis Law filed the E-Service lawsuit in
 25 retaliation for Plaintiffs asserting potential violations of the FDCPA.

26 **III. Plaintiffs Do Not Owe the Subject Debt**

27 52. Because Defendant Town Square Dental failed to submit all of its bills to
 28 Plaintiff Madril's dental insurer, Plaintiffs do not owe the Subject Debt.

1 53. By alleging in the E-Service lawsuit that “Town Square Dental assigned ...
2 the Agreement” to E-Service, and by suing Plaintiff Madril to recover the amounts
3 allegedly owed, Defendants Ellis, Ellis Law and E-Service are responsible for Defendant
4 Town Square Dental’s failure to submit all its bills to Plaintiff Madril’s dental insurer.

5 54. Because Defendant Town Square Dental overcharged Plaintiff Madril,
6 Plaintiffs do not owe the Subject Debt.

7 55. As an alleged assignee of the Agreement and the alleged debts, Defendant
8 E-Service is liable for the errors and omissions of Town Square Dental.

9 56. Because Defendant Town Square Dental did not submit all of its bills to
10 Plaintiff Madril’s dental insurer in violation of Town Square Dental’s representations and
11 obligations to Ms. Madril, Defendants Ellis, Ellis Law and E-Service are precluded from
12 attempting to collect the Subject Debt.

13 **IV. Defendants Are Not Entitled to Recoup Any Fees**

14 57. As alleged in Paragraph 41, Plaintiff Madril does not reflect that Madril is
15 obligated to or otherwise agreed to pay collection fee of 36%.

16 58. Further, because Defendant Town Square Dental failed to submit all of its
17 bills to Plaintiff Madril’s dental insurer, Plaintiffs are not obligated to pay a collection fee
18 of 36%.

19 59. As alleged in Paragraph 43, Plaintiff Madril does not reflect that Madril is
20 obligated to or otherwise agreed to pay an attorney fee of 25%.

21 60. Further, Because Defendant Town Square Dental failed to submit all of its
22 bills to Plaintiff Madril’s dental insurer, Plaintiffs are not obligated to pay an attorney fee
23 of 25%.

24 61. Because Defendant Town Square Dental did not send all of its bills to
25 Plaintiff Madril’s dental insurer, Defendants Ellis, Ellis Law and E-Service are not
26 entitled to recover “[b]ad check damages of \$200.00 plus legal interest” as alleged in the
27 E-Service lawsuit.

1 **V. The Improper Disclosure of Madril's Confidential Dental Records**

2 62. The Health Insurance Portability and Accountability Act ("HIPAA")
 3 precludes the release of health information to someone other than a patient, without the
 4 patient's authorization. 45 C.F.R. § 164.508(a)(1).

5 63. A debt collector should disclose only the minimum information necessary.
 6 45 C.F.R. § 164.502(b) ("When using or disclosing protected health information . . . a
 7 covered entity must make reasonable efforts to limit protected health information to the
 8 minimum necessary to accomplish the intended purpose of the use, disclosure, or
 9 request.").

10 64. Defendants Ellis and Ellis Law improperly learned of and disclosed the
 11 specific types of dental services provided to Madril by Defendant Town Square Dental
 12 without her consent and in violation of the standard of care set forth by HIPAA.

13 65. Defendants Ellis and Ellis Law violated Plaintiff Madril's right to privacy
 14 by improperly learning of and disclosing the specific types of dental services provided to
 15 Madril without her consent and in violation of the standard of care set forth by HIPAA.

16 **VI. Defendant Ellis and Ellis Law's Threats to Deny Future Dental Care**

17 66. Defendants Ellis and Ellis Law told Plaintiff Madril that she would be
 18 unable to obtain dental services from other dentists if she did not pay the Subject Debt.

19 **VII. Causes of Action**

20 **Count I –Violations of the FDCPA**

21 67. Plaintiffs reassert and reallege Paragraphs 1-66 as if fully set forth in this
 22 Count.

23 68. Defendant Ellis Law regularly collects or attempts to collect, directly or
 24 indirectly, debts owed or due or asserted to be owed or due another.

25 69. As a result of the aforementioned conduct, Defendant Ellis Law is a "debt
 26 collector" as this term is defined by Section 1692a(6) of the FDCPA where Section
 27 1692a(6) defines "debt collector" as "any person who uses any instrumentality of

1 interstate commerce or the mails in any business the principal purpose of which is the
2 collection of any debts, or who regularly collects or attempts to collect, directly or
3 indirectly, debts owed or due or asserted to be owed or due another.”

4 70. Defendant Ellis is regularly collects or attempts to collect, directly or
5 indirectly, debts owed or due or asserted to be owed or due another.

6 71. As a result of the aforementioned conduct, Defendant Ellis is a “debt
7 collector” as this term is defined by Section 1692a(6) of the FDCPA where Section
8 1692a(6) defines “debt collector” as “any person who uses any instrumentality of
9 interstate commerce or the mails in any business the principal purpose of which is the
10 collection of any debts, or who regularly collects or attempts to collect, directly or
11 indirectly, debts owed or due or asserted to be owed or due another.”

12 72. In addition to its collection activities related to Plaintiffs, Defendant E-
13 Service is a business where its principal purpose is the collection of defaulted consumer
14 debts.

15 73. As a result of the aforementioned conduct, Defendant E-Service is a “debt
16 collector” as this term is defined by Section 1692a(6) of the FDCPA and because the
17 Subject Debt was in default status when the debt was allegedly obtained by E-Service.

18 74. As alleged above, Plaintiff Madril does not owe the amounts in question
19 because Town Square Dental did not comply with its obligation to send all of Madril’s
20 bills to her insurer.

21 75. Defendants Ellis and Ellis Law violated Sections 1692e, 1692e(2)(A),
22 1692e(10) and 1692f of the FDCPA by wrongfully attempting to collect the Subject Debt
23 from Plaintiff Madril where she does not owe any funds to any of the Defendants as a
24 result of her being mischarged for the dental services she received from Defendant Town
25 Square Dental.

26 76. Defendants Ellis and Ellis Law violated Sections 1692e, 1692e(2)(A),
27 1692e(10) and 1692f of the FDCPA by wrongfully attempting to collect the Subject Debt
28 from Plaintiff Madril where she does not owe any funds to any of the Defendants as a

1 result Defendant Town Square Dental failing to properly bill its services to Madril's
2 dental insurance.

3 77. Defendant E-Service violated Sections 1692e, 1692e(2)(A), 1692e(10) and
4 1692f of the FDCPA by attempting to collect the Subject Debt from Plaintiff Madril
5 where she does not owe any funds to any of the Defendants as a result of her being
6 mischarged for the dental services she received from Defendant Town Square Dental.

7 78. Defendant E-Service violated Sections 1692e, 1692e(2)(A), 1692e(10) and
8 1692f of the FDCPA by wrongfully attempting to collect the Subject Debt from Plaintiff
9 Madril where she does not owe any funds to any of the Defendants as a result of
10 Defendant Town Square Dental failing to properly bill its services to Madril's dental
11 insurer.

12 79. Defendants E-Service, Ellis and Ellis Law violated Sections 1692e,
13 1692e(2)(A), 1692e(10) and 1692f of the FDCPA by attempting to collect a 36%
14 collection fee that was expressly identified in any agreement entered into between
15 Plaintiff Madril and Defendant Town Square Dental.

16 80. Defendants E-Service, Ellis and Ellis Law violated Sections 1692e,
17 1692e(2)(A), 1692e(10) and 1692f of the FDCPA by attempting to collect a 25% attorney
18 fee that was expressly identified in any agreement entered into between Plaintiff Madril
19 and Defendant Town Square Dental.

20 81. Section 1692e(11) of the FDCPA requires debt collectors to disclose that
21 they are a debt collector in all communications to consumers.

22 82. On March 27, 2021, on behalf of Defendant E-Service, Defendants Ellis and
23 Ellis Law sent an email to Plaintiff Madril where the email failed to comply with Section
24 1692e(11).

25 83. Defendants Ellis and Ellis Law violated Sections 1692d, 1692e(5) and 1692f
26 of the FDCPA when Defendants Ellis and Ellis Law told Plaintiff Madril that she would
27 be unable to obtain future dental services from other dentists if she did not pay the Subject
28 Debt.

1 84. Defendants Ellis and Ellis Law violated Sections 1692d, 1692e(5) and 1692f
2 of the FDCPA when they improperly obtained and disclosed Plaintiff's confidential dental
3 records in violation of her rights to privacy as set forth by HIPAA.

4 85. Defendants Ellis, E-Service, Inc. and Ellis Law violated Sections 1692e,
5 1692e(2)(A), 1692e(10) and 1692f of the FDCPA by improperly attempting to collect the
6 Subject Debt from Plaintiff Kim where he does not owe any funds to any of the
7 Defendants as a result of Plaintiff Madril being mischarged for the dental services she
8 received from Defendant Town Square Dental.

9 86. Defendants Ellis, E-Service, Inc. and Ellis Law violated Sections 1692e,
10 1692e(2)(A), 1692e(10) and 1692f of the FDCPA by improperly attempting to collect the
11 Subject Debt from Plaintiff Kim where he does not owe any funds to any of the
12 Defendants as a result of Defendant Town Square Dental failing to properly bill its
13 services to Plaintiff Madril's dental insurer.

14 87. Defendants Ellis, E-Service, Inc. and Ellis Law violated Section 1692i of the
15 FDCPA by filing the E-Service lawsuit in an improper venue.

16 88. As a result of Defendants' FDCPA violations, Plaintiffs have suffered
17 economic damages in the form of damaged by being sued for a debt that they not owe,
18 where defending themselves in response to the E-Service lawsuit has caused them to incur
19 expenses and the loss personal time spent in an effort to defend their good names.

20 89. As a result of Defendants' FDCPA violations, Plaintiffs have suffered
21 economic damages in the form of filing costs and legal fees.

22 90. Because of Defendants' conduct, Plaintiffs are entitled to actual damages
23 along with statutory damages of \$2,000 and reimbursement of costs incurred in defending
24 themselves.

25 WHEREFORE, for the reasons set forth above, Plaintiffs are entitled to the
26 following relief:

27 a. a declaration that Defendants Ellis Law and E-Service have violated
28 Sections 1692d, 1692e, 1692e(2)(A), 1692e(5), 1692e(10) and 1692f
of the FDCPA;

- b. actual damages;
- c. statutory damages and costs; and
- d. reasonable attorney's fees and costs.

Count II - Violations of the Arizona Consumer Fraud Act (“Act”)

91. Plaintiff Maril reasserts and realleges Paragraphs 1-61 as if fully set forth in this Count.

92. A.R.S § 44-1522(A) defines an unlawful practice as:

The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby

93. A.R.S § 44-1521(5) defines “merchandise” to mean “any objects, wares, goods, commodities, intangibles, real estate, or *services*.” (emphasis supplied).

94. A.R.S. § 44-1521(7) defines “sale” to mean “any sale, offer for sale, or attempt to sell any *merchandise* for any consideration, including sales, leases and rentals of any real estate subject to any form of deed restriction imposed as part of a previous sale.” (emphasis supplied).

95. In providing dental services to Plaintiff Madril, Defendant Town Square Dental asked Plaintiff Madril to identify her dental insurer.

96. In providing dental services to Plaintiff Madril, Defendant Town Square Dental represented that it would submit all of Madril's bills to her dental insurer.

97. Defendant Town Square Dental induced Plaintiff Madril to receive dental services on the basis and understanding that Defendant Town Square Dental would submit all of Plaintiff Madril's dental bills to her dental insurer for potential coverage.

98. Defendant Town Square Dental failed to submit one or more bills to Plaintiff Madril's dental insurer.

1 99. The omitted bill or bills would have been paid by of Madril's dental insurer
 2 – *if* Town Square Dental had properly submitted the bill(s) to Madril's dental insurer.

3 100. Defendant Town Square Dental's representation that it would submit all of
 4 Madril's dental bills to her insurer (and its failure to do so) constituted the use of
 5 deceptive act or practice, false pretense, false promise, misrepresentation, and/or
 6 concealment, suppression or omission of a material fact in connection with promotion of
 7 its dental services.

8 101. Defendant Town Square Dental damaged Plaintiff Madril by causing her to
 9 incur charges she was not obligated to pay.

10 102. Defendant Town Square Dental also damaged Plaintiff Madril because she
 11 has been sued by Defendants Ellis, Ellis Law, and E-Service to collect amounts she does
 12 not owe as a result of Defendant Town Square Dental failing to submit one or more bills
 13 to her insurer.

14 103. Plaintiff Madril relied on Town Square Dental's representation that it would
 15 send all of its bills to her insurer.

16 104. Plaintiff Madril would not have agreed to obtain dental services from Town
 17 Square Dental if she knew that Town Square Dental would not send all of its bills to her
 18 insurer.

19 105. Plaintiff Madril does not owe the amounts in question because Town Square
 20 Dental did not send all of Madril's bills to her dental insurer.

21 106. Town Square Dental's promise that it would submit all of Plaintiff Madril's
 22 dental bills to her insurer constitutes a "sale" of "services" as "sale" is defined by A.R.A.
 23 § 44-1521(5) and how "merchandise" is defined to include "services" as defined by
 24 A.R.A. § 44-1521(7).¹

25 1 *See, e.g., Flagstaff Medical Center, Inc. v. Sullivan*, 773 F. Supp. 1325, 1362-63 (D. Az.1991)
 26 ("FMC's collection of payments -- if shown to violate the Act -- constitute merchandise"),
 27 affirmed in part, reversed in part, and remanded by *Flagstaff Medical Center, Inc. v. Sullivan*, 962
 28 F.2d 879 (9th Cir. 1992). *See also, Schmidt v. American Leasco*, 139 Ariz. 509, 679 P.2d 532
 (App. 1983) (consumer fraud found by billing recreational vehicle owner for damages which
 should have been paid by renters).

1 107. Defendants Ellis, Ellis Law and E-Service violated the Act by attempting to
2 collect monies from Plaintiff Madril where Madril does not owe the amounts in question.

3 108. Alternatively, as the alleged purchaser of Plaintiff Madril's alleged debt,
4 Defendant E-Service is responsible for the above-described actions, representations and
5 omissions of Defendant Town Square Dental.

6 109. As agents of Defendant E-Service, Defendants Ellis and Ellis Law are
7 responsible for the above-described actions, representations and omissions of Defendant
8 Town Square Dental.

9 110. Because of Defendant Town Square Dental's underlying conduct, and the
10 unlawful collection efforts of Defendants Ellis, Ellis Law and E-Service, Plaintiff Madril
11 has suffered reputational damages and damages for the cost of having to defend herself
12 from unlawful charges.

13 WHEREFORE, for the reasons set forth above, Plaintiffs are entitled to the
14 following relief:

- 15 a. a declaration that Defendant Town Square Dental's conduct has
16 violated the Act;
- 17 b. a declaration that Defendants Ellis, Ellis Law and E-Service violated
18 the Act by attempting to collect an amount that is not owed by
19 Plaintiffs, resulting from conduct attributable to Defendant Town
20 Square Dental;
- 21 c. actual damages;
 - 22 a. punitive damages, to the extent applicable; and
 - 23 d. reasonable attorney's fees and costs.

24 **Count III – Breach of Contract**

25 111. Plaintiff Madril reasserts and realleges Paragraphs 1-61 as if fully set forth
26 in this Count.

27 112. In agreeing to provide dental services to Plaintiff Madril, Defendant Town
28 Square Dental asked Plaintiff Madril to identify her dental insurer.

29 113. In providing dental services to Plaintiff Madril, Defendant Town Square
30 Dental promised that it would submit all of Madril's bills to her dental insurer.

1 114. Defendant Town Square Dental induced Plaintiff Madril to receive dental
2 services on the basis and understanding that Defendant Town Square Dental would submit
3 all of Plaintiff Madril's dental bills to her dental insurer for potential coverage.

4 115. Defendant Town Square Dental failed to submit one or more bills to Plaintiff
5 Madril's dental insurer.

6 116. The bill(s) that Defendant Town Square Dental failed to submit to Plaintiff
7 Madril's dental insurer would have been paid by Madril's dental insurer – *if* Town Square
8 Dental had properly submitted the bill(s) to Madril's dental insurer.

9 117. Plaintiff Madril was economically harmed by Defendant Town Square
10 Dental's failure to submit all of her bills to her dental insurer.

11 118. Defendant Town Square Dental harmed Plaintiff Madril by causing her to
12 incur charges she was not obligated to pay.

13 119. Defendant Town Square Dental harmed Plaintiff Madril because she has
14 been sued by Defendants Ellis, Ellis Law, and E-Service to collect amounts she does not
15 owe as a result of it failing to submit one or more bills to her dental insurer.

16 120. Plaintiff Madril does not owe the amounts in question because Town Square
17 Dental did not send all of Madril's bills to her dental insurer.

18 121. As the alleged purchaser of Plaintiff Madril's alleged debt, Defendant E-
19 Service is responsible for the above-described actions, representations and omissions of
20 Defendant Town Square Dental.

21 122. As agents of Defendant E-Service, Defendants Ellis and Ellis Law are
22 responsible for the above-described actions, representations and omissions of Defendant
23 Town Square Dental.

24 123. Because of Defendant Town Square Dental's underlying conduct, and the
25 unlawful collection efforts of Defendants Ellis, Ellis Law and E-Service, Plaintiff Madril
26 has suffered reputational damages and damages for the cost of having to defend herself
27 from unlawful charges.

28 WHEREFORE, for the reasons set forth above, Plaintiffs are entitled to the

1 following relief:

- 2 a. a declaration that Defendant Town Square Dental breached its
3 contractual obligation to submit all of Plaintiff Madril's dental bills to
her dental insurer;
- 4 b. a declaration that Defendants Ellis, Ellis Law and E-Service violated
5 the Act by attempting to collect an amount that is not owed by
Plaintiffs, resulting from conduct attributable to Defendant Town
6 Square Dental;
- 7 c. actual damages;
- 8 b. punitive damages, to the extent applicable; and
- 9 d. reasonable attorney's fees and costs.

10 **Count IV - Negligent and Fraudulent Misrepresentations**

11 124. Plaintiff Madril reasserts and realleges Paragraphs 1-61 as if fully set forth
12 in this Count.

13 125. In providing dental services to Plaintiff Madril, Defendant Town Square
14 Dental asked Plaintiff Madril to identify her dental insurer.

15 126. In providing dental services to Plaintiff Madril, Defendant Town Square
16 Dental implied and expressly promised that it would submit all of Madril's bills to her
17 dental insurer.

18 127. Defendant Town Square Dental induced Plaintiff Madril to receive dental
19 services on the basis and understanding that Defendant Town Square Dental would submit
20 all of Plaintiff Madril's dental bills to her dental insurer for potential coverage.

21 128. Defendant Town Square Dental failed to submit one or more bills to
22 Plaintiff Madril's dental insurer.

23 129. The omitted bill or bills would have been paid by of Madril's dental insurer
24 – *if* Town Square Dental had properly submitted the bill(s) to Madril's dental insurer.

25 130. Defendant Town Square Dental committed the tort of negligent
26 misrepresentation by not submitting all of Plaintiff Madril's dental bills to her insurer.

27 131. Defendant Town Square Dental committed the tort of fraudulent
28

1 misrepresentation by not submitting all Plaintiff Madril's dental bills to her dental insurer.

2 132. Plaintiffs do not owe the amounts in question because Defendant Town
3 Square Dental did not send all of Plaintiff Madril's dental bills to her dental insurer.

4 133. Plaintiff Madril relied on Defendant Town Square Dental's representation
5 that it would send all of its bills to her dental insurer.

6 134. Plaintiff Madril would not have agreed to obtain dental services from
7 Defendant Town Square Dental if she knew that Town Square Dental would not send all
8 of its bills to her dental insurer.

9 135. Defendants E-Service, Ellis and Ellis Law, claims that "Town Square Dental
10 provided ACELIA L. MADRIL with services pursuant to the Agreement and submitted
11 bills to ACELIA L. MADRIL's dental insurer for services rendered."

12 136. As alleged above, this statement is false because Defendant Town Square
13 Dental did not submit all of Plaintiff Madril's dental bills to her insurer in contrast to the
14 representations and duties owed to Madril by Town Square Dental.

15 137. Defendants Ellis and Ellis Law have demanded that Plaintiffs pay a
16 collection fee of 36%.

17 138. The Agreement that Defendants Ellis and Ellis Law have relied upon in their
18 communications with Plaintiff Madril does not reflect that Madril is obligated to or
19 otherwise agreed to pay a collection fee of 36%.

20 139. Defendants Ellis and Ellis Law have demanded that Plaintiffs pay an
21 attorney fee of 25%.

22 140. The Agreement that Defendants Ellis and Ellis Law have relied upon in their
23 communications with Plaintiff Madril does not reflect that Madril is obligated to or
24 otherwise agreed to pay an attorney fee of 25%.

25 141. Because Defendants misrepresentations, conduct and omissions, Plaintiffs
26 have suffered reputational damages and damages for the cost of having to defend
27 themselves from charges that they did not incur.

28 WHEREFORE, for the reasons set forth above, Plaintiffs are entitled to the

1 following relief:

- 2 a. a declaration that Defendant Town Square Dental's representations
3 and/or conduct constitutes a tort of negligent misrepresentation;
- 4 b. a declaration that Defendant Town Square Dental's representations
5 and/or conduct constitutes a tort of fraudulent misrepresentation;
- 6 c. a declaration that Defendants E-Service, Ellis and Ellis Law's
7 representations and/or conduct constitutes a tort of negligent
8 misrepresentation;
- 9 d. a declaration that Defendants E-Service, Ellis and Ellis Law's
10 representations and/or conduct constitutes a tort of fraudulent
11 misrepresentation;
- 12 e. a declaration that Defendants Ellis, Ellis Law and E-Service, by and
13 though the assignment of the subject debt from Defendant Town
14 Square Dental, are liable for the negligent and/or fraudulent
15 misrepresentations committed by Town Square Dental;
- 16 f. actual damages and punitive damages to the extent applicable; and
- 17 g. reasonable attorney's fees and costs.

Count V – Breach of Covenant of Good Faith and Fair Dealing

142. Plaintiff Madril reasserts and realleges Paragraphs 1-61 as if fully set forth
15 in this Count.

163. In providing dental services to Plaintiff Madril, Defendant Town Square
17 Dental asked Plaintiff Madril to identify her dental insurer.

184. In providing dental services to Plaintiff Madril, Defendant Town Square
19 Dental represented that it would submit all of Madril's bills to her dental insurer.

205. Defendant Town Square Dental induced Plaintiff Madril to receive dental
21 services on the basis and understanding that Defendant Town Square Dental would submit
22 all of Plaintiff Madril's dental bills to her dental insurer for potential coverage.

236. Defendant Town Square Dental failed to submit one or more bills to
24 Plaintiff Madril's dental insurer.

257. The omitted bill or bills would have been paid by of Madril's dental insurer
26 – *if* Town Square Dental had properly submitted the bill(s) to Madril's dental insurer.

278. Defendant Town Square Dental's representation that it would submit all of

1 Madril's dental bills to her insurer (and its failure to do so) breached its duty of good faith
2 and fair dealing that it owed to Plaintiff Madril.

3 149. Defendant Town Square Dental's representation took place where it had a
4 special and/or fiduciary relationship with Plaintiff Madril as a result of Town Square
5 Dental contracting with Madril provide dental services to Madril in exchange for
6 monetary compensation.

7 150. As a result of the special and/or fiduciary relationship that Defendant Town
8 Square Dental had with Plaintiff Madril, Madril relied on Town Square Dental's
9 representation that it would send all of its bills to her insurer.

10 151. Plaintiff Madril would not have agreed to obtain dental services from Town
11 Square Dental if she knew that it would not send all of its bills to her insurer.

12 152. Defendant Town Square Dental harmed Plaintiff Madril by causing her to
13 incur charges she was not obligated to pay.

14 153. Defendant Town Square Dental harmed Plaintiff Madril because she has
15 been sued by Defendants Ellis, Ellis Law, and E-Service to collect amounts she does not
16 owe as a result of Town Square Dental failing to submit one or more bills to her insurer.

17 154. Plaintiff Madril does not owe the amounts in question because Town Square
18 Dental did not send all of Madril's bills to her dental insurer.

19 155. As the alleged purchaser of Plaintiff Madril's alleged debt, Defendant E-
20 Service is responsible for the above-described actions, representations and omissions of
21 Defendant Town Square Dental.

22 156. As agents of Defendant E-Service, Defendants Ellis and Ellis Law are
23 responsible for the above-described actions, representations and omissions of Defendant
24 Town Square Dental.

25 157. Because of Defendant Town Square Dental's underlying conduct, and the
26 unlawful collection efforts of Defendants Ellis, Ellis Law and E-Service, Plaintiff Madril
27 has suffered reputational damages and damages for the cost of having to defend herself
28 from unlawful charges.

1 WHEREFORE, for the reasons set forth above, Plaintiffs are entitled to the
 2 following relief:

- 3 a. a declaration that Defendant Town Square Dental breached its duties
 4 to Plaintiff Madril by failing to submit all of Madril's dental bills to
 her dental insurer;
- 5 b. a declaration that Defendants Ellis, Ellis Law and E-Service are liable
 6 for the conduct of Defendant Town Square Dental by virtue of E-
 Service attempting to acquire and collect the Subject Debt;
- 7 c. actual damages and punitive damages, to the extent applicable; and
- 8 d. reasonable attorney's fees and costs.

9 **Count VI – Promissory Estoppel**

10 158. Plaintiff Madril reasserts and realleges Paragraphs 1-61 as if fully set forth
 11 in this Count.

12 159. In providing dental services to Plaintiff Madril, Defendant Town Square
 13 Dental asked Plaintiff Madril to identify her dental insurer.

14 160. In providing dental services to Plaintiff Madril, Defendant Town Square
 15 Dental promised that it would submit all of Madril's bills to her dental insurer.

16 161. It was reasonably foreseeable that Plaintiff would Madril rely on Defendant
 17 Town Square Dental's promise.

18 162. Plaintiff Madril did rely on Defendant Town Square Dental's promise and
 19 agreed to receive dental care from Defendant Town Square Dental based upon Town
 20 Square Dental's representation.

21 163. Defendant Town Square Dental induced Plaintiff Madril to receive dental
 22 services on the basis and understanding that Defendant Town Square Dental would submit
 23 all of Plaintiff Madril's dental bills to her dental insurer for potential coverage.

24 164. Plaintiff Madril relied on Defendant Town Square Dental's promise to her
 25 detriment because Defendant Town Square Dental failed to submit one or more bills to
 26 Plaintiff Madril's dental insurer.

27 165. The omitted bill or bills would have been paid by of Madril's dental insurer
 28 – *if* Town Square Dental had properly submitted the bill(s) to Madril's dental insurer.

1 166. As a result of the special and/or fiduciary relationship that Defendant Town
2 Square Dental had with Plaintiff Madril, Madril relied on Town Square Dental's
3 representation that it would send all of its bills to her insurer.

4 167. Plaintiff Madril would not have agreed to obtain dental services from Town
5 Square Dental if she knew that it would not send all of its bills to her insurer.

6 168. Defendant Town Square Dental harmed Plaintiff Madril by causing her to
7 incur charges she was not obligated to pay.

8 169. Defendant Town Square Dental harmed Plaintiff Madril because she has
9 been sued by Defendants Ellis, Ellis Law, and E-Service to collect amounts she does not
10 owe as a result of Town Square Dental failing to submit one or more bills to her insurer.

11 170. Plaintiff Madril does not owe the amounts in question because Town Square
12 Dental did not send all of Madril's bills to her dental insurer.

13 171. As the alleged purchaser of Plaintiff Madril's alleged debt, Defendant E-
14 Service is responsible for the above-described actions, representations and omissions of
15 Defendant Town Square Dental.

16 172. As agents of Defendant E-Service, Defendants Ellis and Ellis Law are
17 responsible for the above-described actions, representations and omissions of Defendant
18 Town Square Dental.

19 173. Because of Defendant Town Square Dental's underlying conduct, and the
20 unlawful collection efforts of Defendants Ellis, Ellis Law and E-Service, Plaintiff Madril
21 has suffered reputational damages and damages for the cost of having to defend herself
22 from unlawful charges.

23 WHEREFORE, for the reasons set forth above, Plaintiffs are entitled to the
24 following relief:

- 25 a. a declaration that Defendant Town Square Dental's conduct in failing
26 to submit all of Plaintiff Madril's dental bills to her dental insurer
 constituted the tort of promissory estoppel;
- 27 b. a declaration that Defendants Ellis, Ellis Law and E-Service are liable
28 for the conduct of Defendant Town Square Dental by virtue of E-

Service attempting to acquire and collect the Subject Debt;

- c. actual damages and punitive damages, to the extent applicable; and
- d. reasonable attorney's fees and costs.

Count VII – Violations of the Arizona Collection Agency Statute (“ACA”)

174. Plaintiffs reassert and reallege Paragraphs 1-66 as if fully set forth in this Count.

175. Defendant E-Service is a licensed “collection agency” under A.R.S. § 32-1001(2)(a) which defines a collection agency as “[a]ll persons engaged directly or indirectly in soliciting claims for collection or in collection of claims owed, due or asserted to be owed or due.”

176. Defendant E-Service operated as a licensed “collection agency” in its interactions with Plaintiffs.

177. A.R.S. § 32-1001(1) defines “claim” to mean “an obligation for the payment of money or its equivalent and a sum or sums owed, due or asserted to be owed or due to another, for which a person is employed to demand payment and collect or enforce such payment[.]”

178. In attempting to collection the Subject Debt from Plaintiffs, Defendant E-Service considered the Subject Debt to be a “claim” as this term is defined by A.R.S. § 32-1001(1).

179. Defendant E-Service's above described activities undertaken by itself and Defendants Ellis and Ellis Law to collect the Subject Debt from Plaintiffs was and is regulated by the ACA.

180. Defendants Ellis and Ellis Law are both a “[p]erson” as this term is defined by A.R.S. § 32-1001(6).

181. In attempting to collection the Subject Debt from Plaintiffs, Defendant E-Service considered the “Subject Debt” to be a “claim” as this term is defined by A.R.S. § 32-1001(1).

1 182. The above described collection activities undertaken by Defendants Ellis
2 and Ellis Law was and is regulated by the ACA.

3 183. A.R.S. § 32-1051(3) requires collection agencies to “deal openly, fairly and
4 honestly in the conduct of the collection agency business.”

5 184. Defendant E-Service’s above described conduct violated A.R.S. § 32-
6 1051(3).

7 185. The prohibitions of A.R.S. § 32-1051(3) apply to lawyers and law firms by
8 and through A.R.S. § 32-1004(A).

9 186. Defendant Ellis’ above described conduct violated A.R.S. § 32-1051(3).

10 187. Defendant Ellis Law’s above described conduct violated A.R.S. § 32-
11 1051(3).

12 188. A.R.S. § 32-1051(4) prohibits collection agencies from “attempt[ing] to
13 collect any collection fee, attorney’s fee, court cost or expenses unless the fees, charges or
14 expenses are justly due from and legally chargeable against the debtor, or have been
15 judicially determined[.]”

16 189. A.R.S. § 32-1051(4) also prohibits collection agencies from “engage[ing] in
17 any unfair or misleading practices or resort[ing] to any oppressive, vindictive or illegal
18 means or methods of collection.”

19 190. Defendant E-Service’s above described conduct violated A.R.S. § 32-
20 1051(4).

21 191. A.R.S. § 32-1055(D)(5) prohibits persons from “[a]id[ing] or abet[ing],
22 directly or indirectly, any person, persons or organizations in evading or violating any of
23 the provisions of [the ACA].”

24 192. Defendant E-Service’s above described conduct violated A.R.S. § 32-
25 1055(D)(5).

26 193. Defendant Ellis’ above described conduct violated A.R.S. § 32-1055(D)(5).

27 194. Defendant Ellis Law’s above described conduct violated A.R.S. § 32-
28 1055(D)(5).

1 195. Plaintiffs have an implied private right of action to enforce the ACA. *See*,
 2 *e.g., Kost v. Scott Lowery Law Office PC*, 14-cv-00146-PHX-DJH, 2014 U.S. Dist.
 3 LEXIS 93800 *6-*9; 2014 WL 3368467 (D. Az. July 20, 2014).

4 WHEREFORE, for the reasons set forth above, Plaintiffs are entitled to the
 5 following relief:

- 6 a. a declaration that the conduct of Defendants Ellis, Ellis Law and E-
 7 Service violated A.R.S. § 32-1051(3);
- 8 b. a declaration that the conduct of Defendant Ellis violated A.R.S. § 32-
 9 1051(4);
- 9 c. a declaration that the conduct of Defendants Ellis, Ellis Law and E-
 10 Service violated A.R.S. § 32-1055(D)(5);
- 11 d. actual damages and punitive damages, to the extent applicable; and
- 12 e. reasonable attorney's fees and costs.

13 **Count VIII – Declaratory Judgment**

14 196. Plaintiff Kim reasserts and realleges Paragraphs 1-66 as if fully set forth in
 15 this Count.

16 197. Plaintiff Kim did not receive any dental services from Defendant Town
 17 Square Dental.

18 198. To the extent that this Honorable Court determines that any acts and/or
 19 omissions of any or all of the Defendants should result in the Court declaring that Plaintiff
 20 Madril is not liable for the Subject Debt and/or any of attorney's fees and/or collection
 21 fees sought by Defendant E-Service, by and through Defendants Ellis and Ellis Law,
 22 Plaintiff Kim seeks a similar declaration as to his alleged liability for the Subject Debt
 23 and/or any of attorney's fees and/or collection fees sought by Defendant E-Service, by and
 24 through Defendants Ellis and Ellis Law.

25 WHEREFORE, for the reasons set forth above, Plaintiff Kim is entitled to the
 26 following relief:

- 27 a. a declaration that Plaintiff Kim is not liable for the Subject Debt;

- b. a declaration that Plaintiff Kim is not liable for any attorney's fees sought by Defendant E-Service, by and through Defendants Ellis and Ellis Law;
- c. a declaration that Plaintiff Kim is not liable for any collection fees sought by Defendant E-Service, by and through Defendants Ellis and Ellis Law;
- d. reimbursement for the costs of bringing this action; and
- e. reasonable attorneys' fees, as awarded by the Court.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury.

DATED: January 21, 2022

Respectfully submitted,

ACELIA L. MADRIL &
JAMES KIM

By: /s/ *James C. Vlahakis*

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